

coinbase DERIVATIVES

April 29, 2024

VIA CFTC Electronic Portal

Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: CFTC Regulation 40.6(a) Certification: Modifications to Chapter 7 and Related Rules

Coinbase Derivatives Submission #2024-18

Dear Mr. Kirkpatrick:

Pursuant to Commodity Futures Trading Commission (“**CFTC**” or “**Commission**”) Regulation 40.6(a), Coinbase Derivatives, LLC (the “**Exchange**”) hereby submits for self-certification modifications to the following Exchange Rules as set forth on in the attached Appendix A. Each capitalized term used and not defined herein shall have the meaning set forth in the Exchange Rulebook (as amended, supplemented or otherwise modified from time to time in accordance with its provisions) (the “**Rulebook**”). The modifications are effective May 13, 2024.

The purpose of the modifications are to:

- Remove the Appeals Panel and appeals from a disciplinary proceeding, summary suspension, and other summary actions;
- Remove Rule 530(k)(6), position limit sanctions and appeals;
- Rule 703, remove settlement as a possible option for the Market Regulation Department to recommend as this needs to be proposed by the respondent;
- Remove the reference to a “potential” respondent after they have become a respondent;
- Move Rule 704(c) to 714(g);
- Allow the Chief Regulatory Officer to issue warning letters without approval from the Review Panel;
- 705:
 - allow the Chief Regulatory Officer to close an investigation and no further action taken; and
 - state a decision by the majority of the Review Panel will constitute the decision of the Review Panel;
- Rule 707, allow:
 - for the respondent to waive their right to a hearing; and
 - the Chief Regulatory Officer and Review Panel to amend or drop charges in response to the respondent’s answer to the notice of charges;

- Rule 709:
 - permit the offer of settlement to be submitted any time up to a business day prior to the hearing and can be withdrawn at any time;
 - authorize the Chief Regulatory Officer to negotiate the offer of settlement with the respondent; and
 - state the offer of settlement will be effective once the settlement agreement has been executed by the Exchange;
- Rule 710:
 - affirm the Review Panel of the Disciplinary Committee has the authority to accept or reject offers of settlement;
 - authorize the Hearing Panel of the Disciplinary Committee the discretion to amend or modify penalties imposed on respondents pursuant to the applicable Rules, and to reinstate revoked access;
 - update the number of non-public individuals on the Disciplinary Committee from three to five;
 - state three individuals shall constitute a quorum of the Review or Hearing Panel, so long as the chair of that panel is in attendance.
- Addition of new Rule 713, state if respondents fails to file an answer or admits the allegations or fails to deny the allegations in support of a charge of a Rule violation contained in the notice of charges, the Hearing Panel shall find the respondent guilty of each such violation and may impose a penalty for each such violation;
- Rule 715, state when the decision of the Hearing Panel will become effective;
- New Rule 716, confirm expense liability; and
- Make other non-substantive edits to provide additional clarity where the Exchange deemed necessary.

Compliance with Core Principles

The Exchange has reviewed the designated contract market (“**DCM**”) core principles (“**Core Principles**”) set forth in the Commodity Exchange Act and the CFTC rules thereunder and has identified that the following Core Principles that may be directly implicated by the modifications:

Core Principle 2 - Compliance with Rules and Core Principle 4 -- Prevention of Market Disruption

All trading on the Exchange, including those conducted by affiliated participants or otherwise, is subject to the Exchange Rulebook including Chapter 5, which prohibits fraud, non-competitive trading, market manipulation and abusive and disruptive trade practices. Additionally, all trading on the Exchange, regardless of affiliation to the Exchange, will be subject to monitoring and surveillance by the Market Regulation Department, which has the authority to investigate and enforce Exchange rules, as described in Chapter 7. The Exchange shall continue its normal practice to establish, monitor, and enforce compliance with the Rules applicable to the trading of Exchange Contracts and the Rule changes will not impact the Exchange’s ability to perform its trade practice and market surveillance obligations under the CEA, CFTC Regulations, and its Rules.

Core Principle 7 - Availability of General Information

Core Principle 7 requires that the DCM ensure that its Rulebook is accurate, complete, current and readily accessible to the public, and all new or amended rules, both substantive and non-substantive, shall be reflected in the Rulebook on the date of implementation. The Exchange makes its Rulebook publicly available on its website. The Exchange shall continue to publish on its Rulebook on the website. Accordingly, these amendments will not negatively affect the Exchange's ability to comply with this Core Principle.

Core Principle 12 - Protection of Markets and Market Participants

Chapters 4 and 5 of the Rulebook require all market participants, affiliated or otherwise, to observe high standards of integrity, market conduct, commercial honor, fair dealing, and just and equitable principles of trade and prohibits, among other things, fraud, non-competitive trading, market manipulation, and abusive and disruptive trade practices. As with all contracts traded on the Exchange, trading on the Exchange will be subject to monitoring and surveillance by the Market Regulation Department and enforced by the Exchange regardless of affiliation with the Exchange.

Core Principle 13 - Disciplinary Procedures

Rulebook Chapter 7 provides for the Exchange to discipline, suspend, or expel members or market participants who violate the rules of the Exchange and trading in the Contracts is subject to these provisions. The Exchange's Market Regulation Department has the authority to exercise its powers of enforcement in the event that Rule violations are identified. The modifications are in furtherance of the Exchange's requirement to establish disciplinary procedures to authorize the Exchange to discipline, suspend, or expel Participants that violate the Exchange's Rules.

Certification

The Exchange is not aware of any substantive opposing views to the Rule changes. The Exchange certifies that modifications comply with the Commodity Exchange Act and the rules and regulations promulgated thereunder.

The Exchange certifies that this submission has been concurrently posted on the Exchange's website at: <https://www.coinbase.com/derivatives>.

If you have any questions or require any further information, please contact me at jane.downey@coinbase.com.

Sincerely,

/s/

Jane Downey
Chief Regulatory Officer

Attachment: Appendix A

APPENDIX A

Rulebook

(additions underlined; deletions ~~stricken through~~)

CHAPTER 1: DEFINITIONS

* * *

“Affiliate” means, with respect to any Person, any Person who, directly or indirectly, Controls, is Controlled by, or is under common Control with, such other Person.

~~“Appeal Panel” means a panel comprised of a chair and two (2) individuals appointed by the Board to consider appeals under Chapter 7.~~

“Applicable Law” means, with respect to any Person, any statute, law, regulation, rule or ordinance of any governmental or self-regulatory authority applicable to such Person, including the CEA and CFTC Regulations.

* * *

CHAPTER 2: EXCHANGE OWNERSHIP

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RULE 204. Qualifications of Directors, Disciplinary Panel Members, ~~Appeal Panel Members~~, Committee Members, Owners and Officers

- (a) This rule sets out the required qualifications of Directors, Disciplinary Panel Members, ~~Appeal Panel Members~~, Committee Members, Owners and Officers.
- (b) A Director or Officer must meet the qualifications set forth from time to time in the Operating Agreement.
- (c) An individual may not serve as a Director or an Officer, or serve on a committee established by the Board, a Disciplinary Panel, ~~or an Appeal Panel~~, or hold a 10% or more ownership interest in the Exchange, if the individual:

* * *

- (d) Any Director, Officer, member of a committee established by the Board, or any member of a Disciplinary Panel, ~~or Appeal Panel~~, any individual nominated to serve in any such role, or any individual authorized by the Market Regulation Department to take summary action shall immediately notify the Chief Executive Officer if such individual meets one (1) or more of the criteria in Rule 204(b).

* * *

RULE 213. Conflicts of Interest and Misuse of Material, Non-Public Information

- (a) No Director, Officer, Disciplinary Panel member or other Person authorized to exercise the Exchange’s authority concerning any preliminary inquiry, investigation; or disciplinary proceeding, ~~or any appeal from a disciplinary proceeding, summary suspension, other~~

~~summary actions~~, “disciplinary committee” or “oversight panel” (both as defined in Commission Regulation 1.69) (any such action, an “Exchange Proceeding” and, collectively, “Exchange Proceedings”), significant action, or Emergency action taken pursuant to Rule 212 (each such Exchange Proceeding or Emergency action, a “Self-Regulatory Action”) will knowingly participate in such body’s deliberations or voting in any matter involving a Self-Regulatory Action where such member has a “material conflict of interest” (each, an “Interested Person”), except as described in Rule 213(d). For purposes of this Section 213(a), the term “significant action” means (1) any action or Rule change that addresses a specific Emergency or (1) any change in margin level that is designed to respond to extraordinary market conditions or that otherwise is likely to have a substantial effect on prices in any Contract.

* * *

CHAPTER 5: TRADING PRACTICES AND BUSINESS CONDUCT

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RULE 530. Position Limits And Exemptions

* * *

(k) Violations

- (1) No Person shall exceed the position limits set forth in the Rules, unless an exemption is granted by the Market Regulation Department. Any positions, including positions established intraday, in excess of those permitted under Rules of the Exchange shall be deemed position limit violations.

* * *

~~(6) — Violations Sanctions and Appeals:~~

- ~~i. — First Violation. The first position limit violation by a Participant will result in a warning letter issued by the Market Regulation Department, with a copy provided to the carrying Clearing Firm(s). In circumstances where the carrying Clearing Firm has also committed a position limit violation as set forth in this Rule 530 by carrying such positions, a warning letter will be issued to the Clearing Firm(s).~~
- ~~ii. — Subsequent Second Violation., Sanctions and Appeals:~~
 - ~~(a) A second position limit violation by a Participant within twenty four (24) months of the issuance of a warning letter will result in the imposition of an automatic fine by the Market Regulation Department to the Participant as set forth below and the issuance of a cease and desist order.~~
 - ~~(b) The automatic fine for a position exceeding the applicable limit by up to 25% shall be \$5,000.~~
 - ~~(c) The automatic fine for a position exceeding the applicable limit by more than 25% shall be \$15,000.~~
- ~~iii. — Referral to the Chief Regulatory Officer.~~

- ~~(a) Any third or subsequent position limit violation within twenty four (24) months of the issuance of a warning letter shall be referred by the Market Regulation Department to the Chief Regulatory Officer for consideration of the issuance of charges.~~
 - ~~(b) Notwithstanding Rule 532(k)(5)(iv)(a), the Market Regulation Department, in its sole discretion, may refer any position limit violation it deems egregious to the Chief Regulatory Officer for consideration of the issuance of charges.~~
 - ~~iv. Appeal. Parties may, within ten (10) Business Days of being provided notice of sanctions issued pursuant to this section, request an appeal to the Exchange Practices Committee.~~
 - ~~(a) Upon receiving a written request for appeal, the Chair of the Exchange Practices Committee shall determine solely upon the written request for appeal and any written response of the Market Regulation Department, whether there is a reasonable basis to conclude that the appellant might be able to meet one (1) of the standards identified in subsection (b) below that would permit the Exchange Practices Committee to set aside, modify or amend the appealed decision. If the Chair determines that such a reasonable basis exists, a hearing will be held. The Exchange Practices Committee Chair's determination of whether to hold a hearing on an appeal shall be final. If a hearing is held the Chair shall allow the filing of briefs in connection with the appeal.~~
 - ~~(b) The Exchange Practices Committee shall not set aside, modify or amend the appealed decision unless it determines by a majority vote that the decision was:
 - ~~(i) Arbitrary, capricious, or an abuse of the Market Regulation Department's discretion;~~
 - ~~(ii) In excess of the Market Regulation Department's authority or jurisdiction; or~~
 - ~~(iii) Based on a clearly erroneous application or interpretation of Exchange Rules.~~~~
 - ~~(c) If a hearing is held, the Exchange Practices Committee shall issue a written decision which shall include a statement of findings with respect to the decision from which the appeal was taken and the Exchange Practices Committee's determination that such initial decision is affirmed, set aside, modified or amended in whole or in part and, with respect to any initial decision that is not affirmed in whole, the Exchange Practices Committee's determination of the order or penalty to be imposed, if any, and the effective date. The decision of the Exchange Practices Committee shall be final and may not be appealed.~~

* * *

CHAPTER 7: DISCIPLINARY RULES

RULE 701. General

- (a) All Participants shall be subject to the Exchange's jurisdiction. All Participants are subject to this Chapter 7 if they, or with respect to a Participant, any other Person using any of its User IDs, are alleged to have violated, to have aided and abetted a violation, to be violating, or to be about to violate, any Rule of the Exchange or any provision of Applicable Law for which the Exchange possesses disciplinary jurisdiction.
- (b) The Exchange, through the Market Regulation Department and the Disciplinary Panel, as applicable, will conduct preliminary inquiries, investigations, disciplinary proceedings ~~and appeals from disciplinary proceedings~~, summary impositions of fines, summary suspensions or other summary actions in accordance with this Chapter 7.
- (c) No Exchange Official, Director, or Officer will interfere with or attempt to influence the process or resolution of any preliminary inquiry, investigation, disciplinary proceeding, ~~appeal from a disciplinary proceeding~~, summary imposition of fines, summary suspension or other summary action (collectively "Disciplinary Action"), ~~except to the extent provided under the Exchange Rules with respect to a proceeding in which the Director is a member of the relevant Appeal Panel.~~
- (d) Any Participant may be represented, at their own cost, by counsel during any Disciplinary Action pursuant to this Chapter 7.

* * *

- (f) Ex Parte Communications.
 - (1) A Person subject to a disciplinary proceeding ~~or an appeal from a disciplinary proceeding~~ (and any counsel or representative of such Person) and the Market Regulation Department (and any counsel or representative of the Market Regulation Department) shall not knowingly make or cause to be made an ex parte communication relevant to the merits of a disciplinary proceeding ~~or an appeal from a disciplinary proceeding~~ to any member of the Disciplinary Panel ~~or the Appeal Panel~~ hearing such proceeding.
 - (2) Members of a Disciplinary Panel ~~or Appeal Panel~~ shall not knowingly make or cause to be made an ex parte communication relevant to the merits of a disciplinary proceeding ~~or an appeal from a disciplinary proceeding~~ to any Person subject to such proceeding (and any counsel or representative of such Person) and the Market Regulation Department (and any counsel or representative of the Market Regulation Department).

* * *

RULE 702. Preliminary Inquiries and Investigations

* * *

- (b) The Market Regulation Department has the authority to:
 - (1) initiate and conduct preliminary inquiries and investigations;
 - (2) prepare Investigative Reports and make recommendations concerning initiating

- disciplinary proceedings; and
- (3) prosecute alleged violations within the Exchange's disciplinary jurisdiction.; ~~and~~
 - ~~(4) represent the Exchange on appeal from any disciplinary proceeding, summary imposition of fines, summary suspension or other summary action.~~

* * *

RULE 703. Reports of Preliminary Inquiries and Investigations

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(b) Any written report of investigation ("Investigative Report") will include the reasons for initiating the investigation (including a summary of the complaint, if any), all relevant facts and evidence gathered, Market Regulation Department staff's analysis and conclusions, the Participant's disciplinary history at the Exchange, and the recommendation of the Market Regulation Department. For each potential respondent, the Market Regulation Department will recommend either:

- (1) closing the investigation without further action;
 - ~~(2) Settlement;~~
 - ~~(3) (2) summary action;~~
 - ~~(4) (3) the preparation and service of a notice of charges for instituting a disciplinary proceeding; or~~
 - ~~(5) (4) resolving the investigation through an informal disposition, including the issuance of a warning letter. An informal disposition (including the issuance of a warning letter) will not constitute a finding of a violation or a sanction, however, the investigative Report must include a copy of any warning letter and no more than one (1) warning letter for the same potential violation may be issued to the same Participant during a rolling twelve (12) month period.~~
- (c) The Investigative Report will be provided to the Chief Regulatory Officer for a determination as to whether the Investigative Report is complete. The Chief Regulatory Officer will then provide the completed Investigative Report to the Review Panel of the Disciplinary Panel, as applicable.

RULE 704. Opportunity to Respond

- (a) After completing its Investigative Report, the Market Regulation Department may, upon approval of the Chief Regulatory Officer, notify each ~~potential~~ respondent that the Market Regulation Department has recommended formal disciplinary charges against the ~~potential~~ respondent.
- (b) The Market Regulation Department may allow a ~~potential~~ respondent to propose a settlement of the matter or to submit a written statement explaining why a disciplinary proceeding should not be instituted or one (1) or more of the potential charges should not be brought. The ~~potential~~ respondent shall submit such written statement within the time limit established by the Market Regulation Department.
- ~~(c) If the respondent has requested a hearing, a copy of the hearing must be made and must become a part of the record of the proceeding. The record must be one that is capable of being accurately transcribed; however, it need not be transcribed unless the~~

~~transcript is requested by Commission staff or the respondent, the decision is appealed pursuant to the rules of the designated contract market, or is reviewed by the Commission pursuant to section 8c of the Act or part 9 of this chapter. In all other instances a summary record of a hearing is permitted.~~

* * *

RULE 705: Review of Investigative Reports

(a) Review of Investigative Reports by the Chief Regulatory Officer

* * *

- (3) Upon receiving the completed Investigative Report or after receiving additional information upon the completion of an investigation, the Chief Regulatory Officer will determine for each potential respondent whether to authorize:
- i. the informal disposition of the investigation (by issuing a warning letter or otherwise) because disciplinary proceedings are unwarranted in which case the Chief Regulatory Officer shall provide a written explanation. For avoidance of doubt, the Chief Regulatory Officer can authorize the issuance of a warning letter without approval from the Review Panel. In the case where a warning letter is issued the Investigative Report, including a copy of the warning letter, will be provided to the Review Panel for informational purposes;
 - ii. the closing of the investigation without any action because no reasonable basis exists to believe that a violation within the Exchange's jurisdiction has occurred or is about to occur in which case the Chief Regulatory Officer shall provide a written explanation. In this case, the Investigative Report not go to the Review Panel and the investigation will be deemed closed; or

* * *

(b) Review of Investigative Reports by the Review Panel of the Disciplinary Panel.

(1) After receiving a completed Investigation Report, as applicable, pursuant to Rule 703 and 705(a)(3), a Review Panel must promptly review the report and, within thirty (30) days of such receipt, must take one (1) of the following actions:

* * *

(3) A decision by a majority of the Review Panel will constitute the decision of the Review Panel. Any conflict between the actions of the Chief Regulatory Officer pursuant to Rule 705(a) and the Disciplinary Panel pursuant to Rule 705(b) shall be resolved by the Regulatory Oversight Committee.

RULE 706. Notice of Charges

* * *

(b) A notice of charges will:

- (1) state the acts, practices or conduct that the respondent is alleged to have

- engaged in;
- (2) state the Exchange Rule or provision of Applicable Law alleged to have been violated or about to be violated;
 - (3) state the proposed sanctions;
 - (4) advise the respondent of its right to a hearing;
 - (5) advise the respondent that he or she has the right to be represented, at their own cost, by legal counsel or any other representative of its choosing in all succeeding stages of the disciplinary process; provided, however, that the respondent may not be represented by any member of the Exchange's Board or Disciplinary Panel, any employee of the Exchange, or any person substantially related to the underlying investigations, such as material witness or other respondents;

* * *

RULE 707. Answer to Notice of Charges

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(d) A respondent may waive their right to a hearing at any time after receipt of the notice of charges. A respondent who elects to waive their right to a hearing on the charges will be notified of the date on which the Hearing Panel will render its decision. Upon a finding of guilt on any charge, the Hearing Panel will promptly determine what penalties, if any, are to be imposed and their effective date. A respondent who has waived their right to a hearing and/or admitted the charges against them will be advised of their right to participate in the hearing solely with respect to the penalty, pursuant to 713(b).

(e) If the respondent submits a written answer pursuant to this Rule 707, the Chief Regulatory Officer in conjunction with the Review Panel shall, within ten (10) days after receipt of the response, advise the respondent:

- (1) of their decision to drop or amend any or all of the charges;
- (2) that the disciplinary proceedings will proceed with respect to all remaining charges in accordance with the notice of charges.

RULE 708. Service of Notice of Charges

(a) Any notice of charges or other documents to be served pursuant to this Chapter 7 may be served upon the respondent and service shall be deemed ~~complete~~ to have been provided to the respondent when emailed to the respondent's email address on file or when either personally or by leaving the same at his or her place of business; by deposited in the United States mail, postage prepaid, via registered or certified mail addressed to the respondent at the address as it appears on the books and records of the Exchange.

~~(b) Any notice of charges or other documents contemplated to be served pursuant to this Chapter 7 may be served upon the respondent and service shall be deemed complete via electronic mail to the electronic mail address as it appears on the books and records of the Exchange.~~

RULE 709. Settlements

(a) A respondent ~~or potential respondent~~ may, at any time up to one (1) business day prior

- to a hearing, propose in writing an offer of settlement related to anticipated or instituted disciplinary proceedings. An offer of settlement may be withdrawn at any time prior to its final acceptance.
- (b) Any offer of settlement should contain proposed findings and sanctions and be signed by the respondent ~~or potential respondent~~ and submitted to the Market Regulation Department.
 - (c) A respondent ~~or potential respondent~~ may offer to settle disciplinary proceedings without admitting or denying the findings contained in the order of the disciplinary proceedings but must accept the jurisdiction of the Exchange over it and over the subject matter of the proceedings and consent to the entry of the findings and sanctions imposed.
 - (d) If a respondent ~~or potential respondent~~ submits an offer of settlement in accordance with paragraph (a) above, the Market Regulation Department will forward the offer to the Chief Regulatory Officer with a recommendation on whether to accept or reject the offer. The Chief Regulatory Officer, or their designee, may negotiate the offer of settlement with the respondent. No offer of settlement may be submitted to the Review Panel unless the Chief Regulatory Officer supports the offer. Any preliminary determination by the Chief Regulatory Officer to accept the offer shall be submitted for review by the ~~Review~~Disciplinary Panel. If the ~~Review~~Disciplinary Panel agrees, then the Chief Regulatory Officer shall conditionally accept an offer of settlement, and that ~~the settlement shall~~will become final and effective on the date the settlement agreement is executed by the Exchange upon the expiration of twenty (20) days after an order of the disciplinary proceedings consistent with the terms of the offer of settlement is served on the respondent.
 - (e) If an offer of settlement is accepted by the ~~Review~~Disciplinary Panel, the panel accepting the offer must issue a written decision specifying the rule violations it has reason to believe were committed, including the basis or reasons for the panel's conclusions, and any sanction to be imposed, which must include full Customer restitution where Customer harm is demonstrated. ~~If an offer of settlement is accepted without the agreement of the Market Regulation Department or Chief Regulatory Officer, the decision must adequately support the Hearing Panel's acceptance of the settlement.~~If applicable, the decision must also include a statement that the respondent has accepted the sanctions imposed without either admitting or denying the Rule violations.
 - (f) If an offer of settlement is accepted and the related order of disciplinary proceedings becomes final, the respondent's submission of the offer will be deemed to constitute a waiver of the right to ~~notice, opportunity for a hearing and review, and appeal~~ under the Exchange Rules. The respondent also waives any claim of bias or prejudgement on the part of the Review Panel.
 - (g) If the offer of settlement of a respondent ~~or potential respondent~~ is not accepted by agreement between the Chief Regulatory Officer and the ~~Review~~Disciplinary Panel, fails to become final or is withdrawn by the respondent ~~or potential respondent~~, the matter will proceed as if the offer had not been made and the offer and all documents relating to it will not become part of the record. Neither a respondent ~~or potential~~

~~respondent~~ nor the Market Regulation Department may use an unaccepted offer of settlement as an admission or in any other manner at a hearing of ~~, or appeal from,~~ disciplinary proceedings.

RULE 710. Disciplinary Panel

- (a) The Disciplinary Panel shall function as a Review Panel and Hearing Panel.
 - (1) The Review Panel shall review completed Investigative Reports in order to determine whether a reasonable basis exists for finding a violation of the Exchange's rules and for authorizing the issuance of notices of charges against persons. The Review Panel shall also have the authority to accept or reject offers of settlement by the respondent.
 - (2) The Hearing Panel shall conduct hearings in connection with any disciplinary proceedings (except for summary impositions of fines pursuant to Rule 718~~7~~ and Summary Suspensions and Other Summary Actions pursuant to Rule 719), to make findings, render decisions, and impose sanctions pursuant to this Chapter 7. The Hearing Panel will also have the discretion to amend or modify penalties imposed on respondents pursuant to the applicable Rules, and to reinstate revoked access.
- (b) The Board shall appoint individuals at the recommendation of the Chief Regulatory Officer to serve for a term of one (1) year, subject to reappointment by the Board, as potential participants on the Disciplinary Panels. The Chief Regulatory Officer shall recommend at least three (3) individuals that will satisfy the conditions of a Public Individuals and at least ~~five~~^{three} (3) individuals who represent the diversity of market participants' interests. The term of an individual that has been selected as a member of a Disciplinary Panel will not expire until the related proceedings are completed. Exchange staff are prohibited from serving on a Disciplinary Panel.
- (c) The chair of any Review Panel or Hearing Panel shall be a Public Individual.
- (d) The Chief Regulatory Officer shall select a separate Review Panel and Hearing Panel prior to the commencement of each investigative or disciplinary matter by randomly selecting at least one (1) Public Individual and the remaining individuals from the industry participant pools so that any group or class of industry participants is precluded from dominating or exercising disproportionate influence on the Disciplinary Panel being formed. Three (3) individuals shall constitute a quorum of the Review or Hearing Panel, so long as the chair of that panel is in attendance.
- (e) If an individual selected is an Interested Person or if a member of the Disciplinary Panel later becomes an Interested Person, a replacement for such individual shall be randomly selected by the Chief Regulatory Officer. Individuals are prohibited from participating as a member of a Disciplinary Panel if such individual participated on a prior Disciplinary Panel proceeding in the same matter.
- (f) Within ten (10) days of being notified of the appointment of the ~~Hearing~~ Disciplinary Panel, a respondent may seek to disqualify any individual named to the ~~Hearing~~ Disciplinary Panel for the reasons identified in Rule 213 or for any other reasonable grounds, including that such individual has a financial interest in the matter or that such individual participated on a prior Disciplinary Panel ~~or Appeal Panel~~ proceeding in the same matter, by serving written notice on the Chief Regulatory

Officer. By not timely filing a request for disqualification, the respondent will be deemed to have waived any objection to the composition of a ~~Hearing~~Disciplinary Panel. The Chief Regulatory Officer of the Exchange will decide the merits of any request for disqualification within his or her sole discretion. Any such decision will be final ~~and not~~ subject to appeal.

* * *

RULE 713. Hearing in the Event of Failure to Deny Charges; Failure to Request Hearing Deemed Acceptance of Penalty

- (a) If the respondent fails to file an answer or admits the allegations or fails to deny the allegations in support of a charge of a Rule violation contained in the notice of charges, the Hearing Panel shall find the respondent guilty of each such violation and may impose a penalty for each such violation. Such decision shall become final in accordance with Rule 715.
- (b) The Hearing Panel shall promptly issue a written decision which incorporates the facts and allegations from the notice of charges and sets forth any penalty to be imposed.

RULE 714~~3~~. Conducting Hearings of Disciplinary Proceedings

* * *

- ~~(c) — If the respondent fails to file an answer, has filed a general denial, or if any or all of the allegations in the notice of charges are not expressly denied in the respondent's answer, the chair of the Hearing Panel may limit evidence concerning any allegations not expressly denied in determining the sanctions to impose. If a respondent fails to file an answer but appears at the hearing, the respondent may not participate in the hearing (by calling or cross examining witnesses, testifying in defense, presenting evidence concerning the notice of charges, or otherwise) unless the Hearing Panel determines that the respondent had a compelling reason for failing to timely file an answer. If the Hearing Panel determines that the respondent had a compelling reason for failing to timely file an answer, the Hearing Panel will adjourn the hearing and direct the respondent to promptly file a written answer in accordance with Rule 707.~~
- ~~(d) — (c) Any Person entitled, required or called upon to attend a hearing before a Hearing Panel pursuant to paragraph (b)(3) above will be given reasonable notice, confirmed in writing, specifying the date, time and place of the hearing, and the caption of the disciplinary proceedings. All Participants (that are individuals), Authorized Traders and other Supervised Persons that are called as witnesses are required to appear at the hearing and, where applicable, produce evidence. The Exchange will make reasonable efforts to secure the presence of all other Persons called as witnesses whose testimony would be relevant, specifically the Exchange requires persons within its jurisdiction, who are called as witnesses, to participate in the hearing and to produce evidence.~~
- ~~(e) — (d) If, during any disciplinary proceedings, the Hearing Panel determines that a reasonable basis exists to believe that the respondent violated or is about to violate a Rule of the Exchange or a provision of Applicable Law other than the violations alleged in the notice of charges, the Hearing Panel may consider those apparent violations after providing the respondent with an opportunity to answer the additional allegations in accordance with Rule 707. In connection with considering apparent violations~~

pursuant to this paragraph (e), the Hearing Panel may request that the Market Regulation Department provide the Hearing Panel with any additional information related to the violations at issue.

- ~~(f)~~ ~~(e)~~ The Hearing Panel may summarily impose sanctions on any Participant, Authorized Trader or other Supervised Person that impedes or delays the progress of a hearing.
- ~~(g)~~ ~~(f)~~ If the respondent has requested a hearing, a copy of the hearing must be made and must become a part of the record of the proceeding. The record must be one that is capable of being accurately transcribed; however, it need not be transcribed unless the transcript is requested by Commission staff or the respondent or is reviewed by the Commission pursuant to section 8c of the Act or part 9 of the CFR. In all other instances a summary record of a hearing is permitted. The Exchange will arrange for any hearing conducted in connection with disciplinary proceedings to be recorded verbatim, or substantially verbatim, in a manner capable of accurate transcription. If the respondent requests a copy of all or portions of the recording of a hearing, the chair of the Hearing Panel may, within his or her sole discretion, require the respondent to pay the costs for transcribing the recording of the hearing.
- ~~(h)~~ ~~(g)~~ No interlocutory appeals of rulings of any Hearing Panel or chair of the Hearing Panel are permitted.

RULE 7154. Decision of Hearing Panel

- (a) As promptly as reasonable following a hearing, the Hearing Panel will issue a written order rendering its decision based on the weight of the evidence contained in the record of the disciplinary proceedings. A decision by a majority of the Hearing Panel will constitute the decision of the Hearing Panel.
- (b) The Exchange will serve a copy of the order of the disciplinary proceedings on the respondent and the Market Regulation Department. The order will be subject to CFTC Rules 38.708 and will include:
 - (1) the notice of charges or summary of the allegations;
 - (2) the answer, if any, or a summary of the answer;
 - (3) a brief summary of the evidence introduced at the hearing or, where appropriate, incorporation by reference of the Investigative Report;
 - (4) findings of fact and conclusions concerning each allegation, including a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each allegation;
 - (5) each specific Rule of the Exchange and provision of Applicable Law that the respondent is found to have violated; and
 - (6) the imposition of sanctions, if any, including the basis for such sanctions and the effective date of each sanction; ~~and~~
 - ~~(7) notice of the respondent's right to appeal pursuant to Rule 716.~~
- (c) ~~Unless a timely notice of appeal is filed pursuant to Rule 716, the order of the disciplinary proceedings~~ Any decision by the Hearing Panel, including any penalty, shall will become the final decision of the Exchange and shall become effective twenty (20) days, or such longer time as the Hearing Panel may specify, after a copy of the written decision of the Hearing Panel has been served on the respondent provided, however, that, in any case where the respondent has consented to the action taken and

to the timing of its effectiveness, the Hearing Panel may cause the decision involving any disciplinary action (including any penalty) to become effective prior to the twenty (20) day period, upon the expiration of twenty (20) days after the order is served on the respondent and provided to the Market Regulation Department.

RULE 716. Liability for Expenses

- (a) A respondent who or which, after notice and opportunity for hearing, has been found to have violated any Rule may, in the discretion of the Hearing Panel appointed in the matter, be required to pay to the Exchange an amount equal to any and all expenses incurred by the Exchange in connection with the prosecution of such violations, in addition to any penalty which may be imposed upon the respondent by virtue of the violations found by the Hearing Panel.
- (b) Regardless of the outcome of any disciplinary proceeding, the Hearing Panel may order a respondent to pay some or all of the costs associated with the disciplinary proceedings, including costs that the Hearing Panel believes were unnecessarily caused by the respondent. Costs may include costs associated with the preliminary inquiry or investigation, the prosecution by the Market Regulation Department, legal and professional assistance, the hearing, and administrative and other expenses incurred by the Hearing Panel.

RULE 7175. Sanctions

* * *

RULE 716. Appeal from Hearing Panel Decision, Summary Impositions of Fines and Other Summary Actions

- (a) ~~A respondent found by the Hearing Panel to have violated (or, in the case of a Participant, whose Authorized Trader, Supervised Person or other Person using its User ID was found to have violated) a Rule of the Exchange or a provision of Applicable Law or who is subject to any summary fine imposed pursuant to Rule 717 or any summary action imposed pursuant to Rule 718 may appeal the decision within twenty (20) days of receiving the order of the disciplinary proceedings or the notice of summary action, as the case may be, by filing a notice of appeal with the Chief Regulatory Officer. While an appeal is pending, the effect of the order of disciplinary proceedings or the summary action (including any sanctions, remedies or costs imposed thereby) shall be suspended, except as provided in Rule 718 (a) with respect to any denial or limit on Trading Privileges or ability to otherwise access the Exchange Trading System.~~
- (b) ~~The notice of appeal must state in writing the grounds for appeal, including the findings of fact, conclusions or sanctions to which the respondent objects. A respondent may appeal the order of disciplinary proceedings or any summary decision on the grounds that:~~
 - (1) ~~the order or decision was arbitrary, capricious, an abuse of discretion, or not in accordance with the Exchange Rules;~~
 - (2) ~~the order or decision exceeded the authority or jurisdiction of the Hearing Panel, the Chief Regulatory Officer or the Exchange;~~

- ~~(3) — the order or decision failed to observe required procedures;~~
- ~~(4) — the order or decision was unsupported by the facts or evidence; or~~
- ~~(5) — the imposed sanctions, remedies or costs are inappropriate or unsupported by the record.~~
- ~~(c) — The Chief Regulatory Officer will forward copies of any notice of appeal received to all parties of the disciplinary proceeding or summary action, as the case may be, except the appellant. On or before twenty (20) days after filing a notice of appeal, the appellant must file with the Chief Regulatory Officer, and serve on the Market Regulation Department, a brief supporting the notice of appeal and documents supporting the brief. On or before twenty (20) days after the date on which the appellant serves supporting brief, the appellee must file and serve its brief in opposition with the Market Regulation Department. On or before ten (10) days after the date on which the appellee serves its brief in opposition, the appellant must file and serve a brief in reply with the Market Regulation Department.~~
- ~~(d) — In connection with any appeal, the Market Regulation Department will furnish to the Chief Regulatory Officer and to the respondent/appellant a transcript of the hearing, any exhibits introduced at the hearing, the notice of appeal, and briefs filed to support and oppose the appeal.~~
- ~~(e) — Within thirty (30) days after the last submission filed pursuant to paragraph (c) above, the Board will appoint an Appeal Panel to consider and determine the appeal. The Board shall appoint individuals at the recommendation of the Chief Regulatory Officer to serve on the Appeal Panel for a term of one (1) year, subject to reappointment by the Board, as potential participants on Appeal Panels. The Chief Regulatory Officer's recommendation shall include Public Individuals. The term of an individual that has been selected as a member of an Appeal Panel will not expire until the related proceedings are completed. Individuals are prohibited from participating as a member of an Appeal Panel if such individual participated on a prior Disciplinary Panel or Appeal Panel proceeding in the same matter. Exchange staff are prohibited from serving on an Appeal Panel.~~
- ~~(f) — The chair of the Appeal Panel shall be a Public Individual.~~
- ~~(g) — Within ten (10) days of being notified of the appointment of the Appeal Panel, an appellant may seek to disqualify any individual named to the Appeal Panel for the reasons identified in Rule 213 or for any other reasonable grounds, including, but not limited that such individual participated on a prior Disciplinary Panel or Appeal Panel proceeding in the same matter, by serving written notice on the Chief Regulatory Officer. By not timely filing a request for disqualification, the appellant will be deemed to have waived any objection to the composition of an Appeal Panel. The Chief Regulatory Officer of the Exchange will decide the merits of any request for disqualification within his or her sole discretion.~~
- ~~(h) — The Appeal Panel will hold a hearing to allow parties to present oral arguments. Any hearing will be conducted privately and confidentially. Notwithstanding the confidentiality of hearings, the Appeal Panel may appoint an expert to attend any hearing and assist in the deliberations if such individuals agree to be subject to appropriate confidentiality agreements. In determining procedural and evidentiary~~

- ~~matters, the Appeal Panel will not be bound by evidentiary or procedural rules or law.~~
- ~~(i) The Appeal Panel will only consider on appeal the record before the Hearing Panel or, in the case of a summary action, the record considered by the Chief Regulatory Officer, the notice of appeal, the briefs filed in support and opposition of the appeal, and any oral arguments of the parties. The Appeal Panel may only consider new evidence when the Appeals Panel determines that good cause exists as to why the evidence was not introduced during the disciplinary proceeding or when imposing the summary action.~~
 - ~~(j) After completing its review, the Appeal Panel may affirm, modify or reverse any order of the disciplinary proceedings or summary action under appeal, in whole or in part, including increasing, decreasing or eliminating any sanction or remedy imposed, imposing any other sanction or remedy authorized by the Exchange Rules, remanding the matter to the same or a different Hearing Panel for further disciplinary proceedings, or ordering a new hearing.~~
 - ~~(k) As promptly as reasonably possible following its review, the Appeal Panel will issue a written decision based on the weight of the evidence before the Appeal Panel. The decision of the Appeal Panel will include a statement of findings of fact and conclusions for each finding, sanction, remedy and cost reviewed on appeal, including each specific Rule of the Exchange and provision of Applicable Law that the respondent is found to have violated, if any, and the imposition of sanctions, remedies and costs, if any, and the effective date of each sanction, remedy or cost.~~
 - ~~(l) The Appeal Panel's written order will be the final action of the Exchange and will not be subject to appeal within the Exchange.~~

RULE 7187. Summary Imposition of Fines

- (a) The Chief Regulatory Officer may summarily impose a fine against a Participant (on behalf of itself or any of its Authorized Traders, other Supervised Persons or other Persons using any of its User IDs) or Authorized Trader for failing:
 - (1) to make timely payments of original or variation margin, Options premiums, fees, costs, charges or fines to the Exchange or the Clearing House;
 - (2) to make timely and accurate submissions to the Exchange of notices, reports or other information required by the Exchange Rules; and
 - (3) to keep any books and records required by the Exchange Rules.
- (b) The Market Regulation Department, acting on behalf of the Chief Regulatory Officer, will give notice of any fine imposed pursuant to this Rule 7187 to each Participant or Authorized Trader subject thereto. The notice will specify:
 - (1) the violations of the Exchange Rules for which the fine is being imposed;
 - (2) the date of the violation for which the fine is being imposed; and
 - (3) the amount of the fine.

~~Within twenty (20) days of serving the notice of fine, the Participant or Authorized Trader, as the case may be, must either pay or cause the payment of the fine, or file notice of an appeal pursuant to Rule 716. Unless timely notice of appeal is filed pursuant to Rule 717, the fine will become final upon the expiration of twenty (20) days after the notice of fine is served on the Participant or Authorized Trader, as the case may be.~~
- (c) The Exchange will set the amount of any fines imposed pursuant to this Rule 7187, with

the maximum fine for each violation not to exceed \$5,000. Summary imposition of fines pursuant to this Rule 7187 will not preclude the Exchange from bringing any other action against the Participant (or any of its Authorized Traders or other Supervised Persons) or Authorized Trader, as the case may be.

RULE 7198. Summary Suspensions and Other Summary Actions

* * *

- (c) ~~Unless timely notice of appeal is filed pursuant to Rule 716, t~~The summary action will become final upon the expiration of twenty (20) days after the notice of action is served on the respondent.
- (d) At the request of the Exchange, a respondent against whom a summary action is brought pursuant to this Rule 7198 must provide books and records over which the respondent has access or control and must furnish information to, or appear or testify before, the Exchange in connection with the enforcement of any Rule of the Exchange.
- (e) A respondent whose Trading Privileges and/or ability to otherwise access the Exchange Trading System are suspended, revoked, limited, conditioned, restricted or qualified pursuant to this Rule 7198 may apply for reinstatement by filing with the Market Regulation Department a written request stating the applicant's reasons for seeking reinstatement. The Exchange will not consider a respondent's request for reinstatement if the respondent (i) owes any fines, fees, charges or costs to the Exchange; (ii) continues to fail to appear at disciplinary proceedings without good cause; or (iii) continues to impede the progress of disciplinary proceedings.
- (f) Within a reasonable period after the filing of a request for reinstatement, the ~~Hearing Appeals~~ Panel will conduct a hearing to consider the request. At the hearing for reinstatement, the respondent will present its, his or her case supporting the reinstatement and the Market Regulation Department, acting on behalf of the Chief Regulatory Officer may, in its discretion, present its case opposing or supporting the reinstatement and each may present evidence and facts and call, examine and cross-examine witnesses. At the hearing for reinstatement, the Exchange may require any Participant, Authorized Trader or other Supervised Person to appear as witnesses and produce evidence if the ~~Hearing Appeals~~ Panel determines that the evidence is relevant.
- (g) As promptly as reasonably possible after a reinstatement hearing, the ~~Hearing Appeals~~ Panel will issue an order reinstating, denying the reinstatement, or placing conditions on the reinstatement of the Trading Privileges and/or ability to otherwise access the Exchange Trading System of the respondent. The order will include a brief summary of the evidence introduced at the reinstatement hearing; and, if applicable, findings of fact and conclusions not contained in the notice of summary action issued pursuant to Rule 7154(b) above. The ~~Hearing Appeals~~ Panel's order will be the final decision of the Exchange ~~may not be appealed~~.

RULE 7209. Rights and Responsibilities after Suspension or Termination

* * *

- (d) A suspended or terminated Participant or Authorized Trader remains subject to the

Exchange Rules and the jurisdiction of the Exchange for acts and omissions prior to the suspension of termination, and must cooperate in any preliminary inquiry, investigation, disciplinary proceeding, ~~appeal of disciplinary proceedings~~, summary suspension or other summary action as if the suspended or terminated Participant or Authorized Trader still had Trading Privileges or ability to otherwise access the Exchange Trading System.

* * *

RULE 7210. Notice to the Respondent and the Public

* * *

CHAPTER 8: ARBITRATION RULES

* * *

RULE 803. Certain Claims Against the Exchange Involving Trading Systems or Services

* * *

(d) Award.

* * *

(2) The decision of a majority of the National Futures Association Arbitration Panel shall be final and binding, and there shall be no appeal to the Board, an Exchange committee, or a Disciplinary Panel ~~or a Hearing Panel or Appeal Panel~~ of the Exchange. A party may move, within three (3) Business Days of the award, that the award be corrected to remedy any miscalculation or misdescription or where the award is otherwise imperfect in a matter of form not affecting the merits of the award.

APPENDIX A

Rulebook

(Clean)

CHAPTER 1: DEFINITIONS

* * *

“Affiliate” means, with respect to any Person, any Person who, directly or indirectly, Controls, is Controlled by, or is under common Control with, such other Person.

“Applicable Law” means, with respect to any Person, any statute, law, regulation, rule or ordinance of any governmental or self-regulatory authority applicable to such Person, including the CEA and CFTC Regulations.

* * *

CHAPTER 2: EXCHANGE OWNERSHIP

* * *

RULE 204. Qualifications of Directors, Disciplinary Panel Members, Committee Members, Owners and Officers

- (a) This rule sets out the required qualifications of Directors, Disciplinary Panel Members, Committee Members, Owners and Officers.
- (b) A Director or Officer must meet the qualifications set forth from time to time in the Operating Agreement.
- (c) An individual may not serve as a Director or an Officer, or serve on a committee established by the Board, a Disciplinary Panel, or hold a 10% or more ownership interest in the Exchange, if the individual:

* * *

- (d) Any Director, Officer, member of a committee established by the Board, or any member of a Disciplinary Panel, any individual nominated to serve in any such role, or any individual authorized by the Market Regulation Department to take summary action shall immediately notify the Chief Executive Officer if such individual meets one (1) or more of the criteria in Rule 204(b).

* * *

RULE 213. Conflicts of Interest and Misuse of Material, Non-Public Information

- (a) No Director, Officer, Disciplinary Panel member or other Person authorized to exercise the Exchange’s authority concerning any preliminary inquiry, investigation or disciplinary proceeding, “disciplinary committee” or “oversight panel” (both as defined in Commission Regulation 1.69) (any such action, an “Exchange Proceeding” and, collectively, “Exchange Proceedings”), significant action, or Emergency action taken pursuant to Rule 212 (each such Exchange Proceeding or Emergency action, a “Self-Regulatory Action”)

will knowingly participate in such body's deliberations or voting in any matter involving a Self-Regulatory Action where such member has a "material conflict of interest" (each, an "Interested Person"), except as described in Rule 213(d). For purposes of this Section 213(a), the term "significant action" means (1) any action or Rule change that addresses a specific Emergency or (1) any change in margin level that is designed to respond to extraordinary market conditions or that otherwise is likely to have a substantial effect on prices in any Contract.

* * *

CHAPTER 5: TRADING PRACTICES AND BUSINESS CONDUCT

* * *

RULE 530. Position Limits And Exemptions

* * *

(k) Violations

- (a) No Person shall exceed the position limits set forth in the Rules, unless an exemption is granted by the Market Regulation Department. Any positions, including positions established intraday, in excess of those permitted under Rules of the Exchange shall be deemed position limit violations.

* * *

CHAPTER 7: DISCIPLINARY RULES

RULE 701. General

- (a) All Participants shall be subject to the Exchange's jurisdiction. All Participants are subject to this Chapter 7 if they, or with respect to a Participant, any other Person using any of its User IDs, are alleged to have violated, to have aided and abetted a violation, to be violating, or to be about to violate, any Rule of the Exchange or any provision of Applicable Law for which the Exchange possesses disciplinary jurisdiction.
- (b) The Exchange, through the Market Regulation Department and the Disciplinary Panel, as applicable, will conduct preliminary inquiries, investigations, disciplinary proceedings, summary impositions of fines, summary suspensions or other summary actions in accordance with this Chapter 7.
- (c) No Exchange Official, Director, or Officer will interfere with or attempt to influence the process or resolution of any preliminary inquiry, investigation, disciplinary proceeding, summary imposition of fines, summary suspension or other summary action (collectively "Disciplinary Action").
- (d) Any Participant may be represented, at their own cost, by counsel during any Disciplinary Action pursuant to this Chapter 7.

* * *

(f) Ex Parte Communications.

- (1) A Person subject to a disciplinary proceeding (and any counsel or representative of such Person) and the Market Regulation Department (and any

counsel or representative of the Market Regulation Department) shall not knowingly make or cause to be made an ex parte communication relevant to the merits of a disciplinary proceeding to any member of the Disciplinary Panel hearing such proceeding.

- (2) Members of a Disciplinary Panel shall not knowingly make or cause to be made an ex parte communication relevant to the merits of a disciplinary proceeding to any Person subject to such proceeding (and any counsel or representative of such Person) and the Market Regulation Department (and any counsel or representative of the Market Regulation Department).

* * *

RULE 702. Preliminary Inquiries and Investigations

* * *

- (b) The Market Regulation Department has the authority to:
 - (1) initiate and conduct preliminary inquiries and investigations;
 - (2) prepare Investigative Reports and make recommendations concerning initiating disciplinary proceedings; and
 - (3) prosecute alleged violations within the Exchange's disciplinary jurisdiction.

* * *

RULE 703. Reports of Preliminary Inquiries and Investigations

* * *

(b) Any written report of investigation ("Investigative Report") will include the reasons for initiating the investigation (including a summary of the complaint, if any), all relevant facts and evidence gathered, Market Regulation Department staff's analysis and conclusions, the Participant's disciplinary history at the Exchange, and the recommendation of the Market Regulation Department. For each potential respondent, the Market Regulation Department will recommend either:

- (1) closing the investigation without further action;
 - (2) summary action;
 - (3) the preparation and service of a notice of charges for instituting a disciplinary proceeding; or
 - (4) resolving the investigation through an informal disposition, including the issuance of a warning letter. An informal disposition (including the issuance of a warning letter) will not constitute a finding of a violation or a sanction, however, the Investigative Report must include a copy of any warning letter and no more than one (1) warning letter for the same potential violation may be issued to the same Participant during a rolling twelve (12) month period.
- (c) The Investigative Report will be provided to the Chief Regulatory Officer for a determination as to whether the Investigative Report is complete. The Chief Regulatory Officer will then provide the completed Investigative Report to the Review Panel of the Disciplinary Panel, as applicable.

* * *

RULE 704. Opportunity to Respond

- (a) After completing its Investigative Report, the Market Regulation Department may, upon approval of the Chief Regulatory Officer, notify each respondent that the Market Regulation Department has recommended formal disciplinary charges against the respondent.
- (b) The Market Regulation Department may allow a respondent to propose a settlement of the matter or to submit a written statement explaining why a disciplinary proceeding should not be instituted or one (1) or more of the potential charges should not be brought. The respondent shall submit such written statement within the time limit established by the Market Regulation Department.

* * *

RULE 705: Review of Investigative Reports

- (a) Review of Investigative Reports by the Chief Regulatory Officer

* * *

- (3) Upon receiving the completed Investigative Report or after receiving additional information upon the completion of an investigation, the Chief Regulatory Officer will determine for each potential respondent whether to authorize:
 - i. the informal disposition of the investigation (by issuing a warning letter or otherwise) because disciplinary proceedings are unwarranted in which case the Chief Regulatory Officer shall provide a written explanation. For avoidance of doubt, the Chief Regulatory Officer can authorize the issuance of a warning letter without approval from the Review Panel. In the case where a warning letter is issued the Investigative Report, including a copy of the warning letter, will be provided to the Review Panel for informational purposes;
 - ii. the closing of the investigation without any action because no reasonable basis exists to believe that a violation within the Exchange’s jurisdiction has occurred or is about to occur in which case the Chief Regulatory Officer shall provide a written explanation. In this case, the Investigative Report not go to the Review Panel and the investigation will be deemed closed; or

* * *

- (b) Review of Investigative Reports by the Review Panel of the Disciplinary Panel.
 - (1) After receiving a completed Investigation Report, as applicable, pursuant to Rule 703 and 705(a)(3), a Review Panel must promptly review the report and, within thirty (30) days of such receipt, must take one (1) of the following actions:

* * *

(3) A decision by a majority of the Review Panel will constitute the decision of the Review Panel. Any conflict between the actions of the Chief Regulatory Officer pursuant to Rule 705(a) and the Disciplinary Panel pursuant to Rule 705(b) shall be resolved by the Regulatory Oversight Committee.

RULE 706. Notice of Charges

* * *

(b) A notice of charges will:

- (1) state the acts, practices or conduct that the respondent is alleged to have engaged in;
- (2) state the Exchange Rule or provision of Applicable Law alleged to have been violated or about to be violated;
- (3) state the proposed sanctions;
- (4) advise the respondent of its right to a hearing;
- (5) advise the respondent that he or she has the right to be represented, at their own cost, by legal counsel or any other representative of its choosing in all succeeding stages of the disciplinary process; provided, however, that the respondent may not be represented by any member of the Exchange's Board or Disciplinary Panel, any employee of the Exchange, or any person substantially related to the underlying investigations, such as material witness or other respondents;

* * *

RULE 707. Answer to Notice of Charges

* * *

(d) A respondent may waive their right to a hearing at any time after receipt of the notice of charges. A respondent who elects to waive their right to a hearing on the charges will be notified of the date on which the Hearing Panel will render its decision. Upon a finding of guilt on any charge, the Hearing Panel will promptly determine what penalties, if any, are to be imposed and their effective date. A respondent who has waived their right to a hearing and/or admitted the charges against them will be advised of their right to participate in the hearing solely with respect to the penalty, pursuant to 713(b).

(e) If the respondent submits a written answer pursuant to this Rule 707, the Chief Regulatory Officer in conjunction with the Review Panel shall, within ten (10) days after receipt of the response, advise the respondent:

- (1) of their decision to drop or amend any or all of the charges;
- (2) that the disciplinary proceedings will proceed with respect to all remaining charges in accordance with the notice of charges.

RULE 708. Service of Notice of Charges

(a) Any notice of charges or other documents to be served pursuant to this Chapter 7 may be served upon the respondent and service shall be deemed to have been provided to the respondent when emailed to the respondent's email address on file or when

deposited in the United States mail, postage prepaid, via registered or certified mail addressed to the respondent at the address as it appears on the books and records of the Exchange.

RULE 709. Settlements

- (a) A respondent may, at any time up to one (1) business day prior to a hearing, propose in writing an offer of settlement related to anticipated or instituted disciplinary proceedings. An offer of settlement may be withdrawn at any time prior to its final acceptance.
- (b) Any offer of settlement should contain proposed findings and sanctions and be signed by the respondent and submitted to the Market Regulation Department.
- (c) A respondent may offer to settle disciplinary proceedings without admitting or denying the findings contained in the order of the disciplinary proceedings but must accept the jurisdiction of the Exchange over it and over the subject matter of the proceedings and consent to the entry of the findings and sanctions imposed.
- (d) If a respondent submits an offer of settlement in accordance with paragraph (a) above, the Market Regulation Department will forward the offer to the Chief Regulatory Officer with a recommendation on whether to accept or reject the offer. The Chief Regulatory Officer, or their designee, may negotiate the offer of settlement with the respondent. No offer of settlement may be submitted to the Review Panel unless the Chief Regulatory Officer supports the offer. Any preliminary determination by the Chief Regulatory Officer to accept the offer shall be submitted for review by the Review Panel. If the Review Panel agrees, then the Chief Regulatory Officer shall conditionally accept an offer of settlement, and that settlement shall become final and effective on the date the settlement agreement is executed by the Exchange.
- (e) If an offer of settlement is accepted by the Review Panel, the panel accepting the offer must issue a written decision specifying the rule violations it has reason to believe were committed, including the basis or reasons for the panel's conclusions, and any sanction to be imposed, which must include full Customer restitution where Customer harm is demonstrated. If applicable, the decision must also include a statement that the respondent has accepted the sanctions imposed without either admitting or denying the Rule violations.
- (f) If an offer of settlement is accepted and the related order of disciplinary proceedings becomes final, the respondent's submission of the offer will be deemed to constitute a waiver of the right to a hearing under the Exchange Rules. The respondent also waives any claim of bias or prejudgment on the part of the Review Panel.
- (g) If the offer of settlement of a respondent is not accepted by agreement between the Chief Regulatory Officer and the Review Panel, fails to become final or is withdrawn by the respondent, the matter will proceed as if the offer had not been made and the offer and all documents relating to it will not become part of the record. Neither a respondent nor the Market Regulation Department may use an unaccepted offer of settlement as an admission or in any other manner at a hearing of disciplinary proceedings.

RULE 710. Disciplinary Panel

- (a) The Disciplinary Panel shall function as a Review Panel and Hearing Panel.
 - (1) The Review Panel shall review completed Investigative Reports in order to determine whether a reasonable basis exists for finding a violation of the Exchange's rules and for authorizing the issuance of notices of charges against persons. The Review Panel shall also have the authority to accept or reject offers of settlement by the respondent.
 - (2) The Hearing Panel shall conduct hearings in connection with any disciplinary proceedings (except for summary impositions of fines pursuant to Rule 718 and Summary Suspensions and Other Summary Actions pursuant to Rule 719), to make findings, render decisions, and impose sanctions pursuant to this Chapter 7. The Hearing Panel will also have the discretion to amend or modify penalties imposed on respondents pursuant to the applicable Rules, and to reinstate revoked access.
- (b) The Board shall appoint individuals at the recommendation of the Chief Regulatory Officer to serve for a term of one (1) year, subject to reappointment by the Board, as potential participants on the Disciplinary Panels. The Chief Regulatory Officer shall recommend at least three (3) individuals that will satisfy the conditions of a Public Individuals and at least five (5) individuals who represent the diversity of market participants' interests. The term of an individual that has been selected as a member of a Disciplinary Panel will not expire until the related proceedings are completed. Exchange staff are prohibited from serving on a Disciplinary Panel.
- (c) The chair of any Review Panel or Hearing Panel shall be a Public Individual.
- (d) The Chief Regulatory Officer shall select a separate Review Panel and Hearing Panel prior to the commencement of each investigative or disciplinary matter by randomly selecting at least one (1) Public Individual and the remaining individuals from the industry participant pools so that any group or class of industry participants is precluded from dominating or exercising disproportionate influence on the Disciplinary Panel being formed. Three (3) individuals shall constitute a quorum of the Review or Hearing Panel, so long as the chair of that panel is in attendance.
- (e) If an individual selected is an Interested Person or if a member of the Disciplinary Panel later becomes an Interested Person, a replacement for such individual shall be randomly selected by the Chief Regulatory Officer. Individuals are prohibited from participating as a member of a Disciplinary Panel if such individual participated on a prior Disciplinary Panel proceeding in the same matter.
- (f) Within ten (10) days of being notified of the appointment of the Hearing Panel, a respondent may seek to disqualify any individual named to the Hearing Panel for the reasons identified in Rule 213 or for any other reasonable grounds, including that such individual has a financial interest in the matter or that such individual participated on a prior Disciplinary Panel proceeding in the same matter, by serving written notice on the Chief Regulatory Officer. By not timely filing a request for disqualification, the respondent will be deemed to have waived any objection to the composition of a Hearing Panel. The Chief Regulatory Officer of the Exchange will decide the merits of any request for disqualification within his or her sole discretion. Any such decision will

be final.

* * *

RULE 713. Hearing in the Event of Failure to Deny Charges; Failure to Request Hearing Deemed Acceptance of Penalty

- (c) If the respondent fails to file an answer or admits the allegations or fails to deny the allegations in support of a charge of a Rule violation contained in the notice of charges, the Hearing Panel shall find the respondent guilty of each such violation and may impose a penalty for each such violation. Such decision shall become final in accordance with Rule 715.
- (d) The Hearing Panel shall promptly issue a written decision which incorporates the facts and allegations from the notice of charges and sets forth any penalty to be imposed.

RULE 714. Conducting Hearings of Disciplinary Proceedings

* * *

- (c) Any Person entitled, required or called upon to attend a hearing before a Hearing Panel pursuant to paragraph (b)(3) above will be given reasonable notice, confirmed in writing, specifying the date, time and place of the hearing, and the caption of the disciplinary proceedings. All Participants (that are individuals), Authorized Traders and other Supervised Persons that are called as witnesses are required to appear at the hearing and, where applicable, produce evidence. The Exchange will make reasonable efforts to secure the presence of all other Persons called as witnesses whose testimony would be relevant, specifically the Exchange requires persons within its jurisdiction, who are called as witnesses, to participate in the hearing and to produce evidence.
- (d) If, during any disciplinary proceedings, the Hearing Panel determines that a reasonable basis exists to believe that the respondent violated or is about to violate a Rule of the Exchange or a provision of Applicable Law other than the violations alleged in the notice of charges, the Hearing Panel may consider those apparent violations after providing the respondent with an opportunity to answer the additional allegations in accordance with Rule 707. In connection with considering apparent violations pursuant to this paragraph (e), the Hearing Panel may request that the Market Regulation Department provide the Hearing Panel with any additional information related to the violations at issue.
- (e) The Hearing Panel may summarily impose sanctions on any Participant, Authorized Trader or other Supervised Person that impedes or delays the progress of a hearing.
- (f) If the respondent has requested a hearing, a copy of the hearing must be made and must become a part of the record of the proceeding. The record must be one that is capable of being accurately transcribed; however, it need not be transcribed unless the transcript is requested by Commission staff or the respondent or is reviewed by the Commission pursuant to section 8c of the Act or part 9 of the CFR. In all other instances a summary record of a hearing is permitted. If the respondent requests a copy of all or portions of the recording of a hearing, the chair of the Hearing Panel may, within his or her sole discretion, require the respondent to pay the costs for transcribing

- the recording of the hearing.
- (g) No interlocutory appeals of rulings of any Hearing Panel or chair of the Hearing Panel are permitted.

RULE 715. Decision of Hearing Panel

- (a) As promptly as reasonable following a hearing, the Hearing Panel will issue a written order rendering its decision based on the weight of the evidence contained in the record of the disciplinary proceedings. A decision by a majority of the Hearing Panel will constitute the decision of the Hearing Panel.
- (b) The Exchange will serve a copy of the order of the disciplinary proceedings on the respondent and the Market Regulation Department. The order will be subject to CFTC Rules 38.708 and will include:
 - (1) the notice of charges or summary of the allegations;
 - (2) the answer, if any, or a summary of the answer;
 - (3) a brief summary of the evidence introduced at the hearing or, where appropriate, incorporation by reference of the Investigative Report;
 - (4) findings of fact and conclusions concerning each allegation, including a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each allegation;
 - (5) each specific Rule of the Exchange and provision of Applicable Law that the respondent is found to have violated; and
 - (6) the imposition of sanctions, if any, including the basis for such sanctions and the effective date of each sanction.
- (c) Any decision by the Hearing Panel, including any penalty, shall become the final decision of the Exchange and shall become effective twenty (20) days, or such longer time as the Hearing Panel may specify, after a copy of the written decision of the Hearing Panel has been served on the respondent provided, however, that, in any case where the respondent has consented to the action taken and to the timing of its effectiveness, the Hearing Panel may cause the decision involving any disciplinary action (including any penalty) to become effective prior to the twenty (20) day period.

RULE 716. Liability for Expenses

- (c) A respondent who or which, after notice and opportunity for hearing, has been found to have violated any Rule may, in the discretion of the Hearing Panel appointed in the matter, be required to pay to the Exchange an amount equal to any and all expenses incurred by the Exchange in connection with the prosecution of such violations, in addition to any penalty which may be imposed upon the respondent by virtue of the violations found by the Hearing Panel.
- (d) Regardless of the outcome of any disciplinary proceeding, the Hearing Panel may order a respondent to pay some or all of the costs associated with the disciplinary proceedings, including costs that the Hearing Panel believes were unnecessarily caused by the respondent. Costs may include costs associated with the preliminary inquiry or investigation, the prosecution by the Market Regulation Department, legal and professional assistance, the hearing, and administrative and other expenses incurred by

the Hearing Panel.

RULE 717. Sanctions

* * *

RULE 718. Summary Imposition of Fines

- (a) The Chief Regulatory Officer may summarily impose a fine against a Participant (on behalf of itself or any of its Authorized Traders, other Supervised Persons or other Persons using any of its User IDs) or Authorized Trader for failing:
- (1) to make timely payments of original or variation margin, Options premiums, fees, costs, charges or fines to the Exchange or the Clearing House;
 - (2) to make timely and accurate submissions to the Exchange of notices, reports or other information required by the Exchange Rules; and
 - (3) to keep any books and records required by the Exchange Rules.
- (b) The Market Regulation Department, acting on behalf of the Chief Regulatory Officer, will give notice of any fine imposed pursuant to this Rule 718 to each Participant or Authorized Trader subject thereto. The notice will specify:
- (1) the violations of the Exchange Rules for which the fine is being imposed;
 - (2) the date of the violation for which the fine is being imposed; and
 - (3) the amount of the fine.
- Within twenty (20) days of serving the notice of fine, the Participant or Authorized Trader, as the case may be, must pay or cause the payment of the fine. The fine will become final upon the expiration of twenty (20) days after the notice of fine is served on the Participant or Authorized Trader.
- (c) The Exchange will set the amount of any fines imposed pursuant to this Rule 718, with the maximum fine for each violation not to exceed \$5,000. Summary imposition of fines pursuant to this Rule 718 will not preclude the Exchange from bringing any other action against the Participant (or any of its Authorized Traders or other Supervised Persons) or Authorized Trader, as the case may be.

RULE 719. Summary Suspensions and Other Summary Actions

* * *

- (c) The summary action will become final upon the expiration of twenty (20) days after the notice of action is served on the respondent.
- (d) At the request of the Exchange, a respondent against whom a summary action is brought pursuant to this Rule 719 must provide books and records over which the respondent has access or control and must furnish information to, or appear or testify before, the Exchange in connection with the enforcement of any Rule of the Exchange.
- (e) A respondent whose Trading Privileges and/or ability to otherwise access the Exchange Trading System are suspended, revoked, limited, conditioned, restricted or qualified pursuant to this Rule 719 may apply for reinstatement by filing with the Market Regulation Department a written request stating the applicant's reasons for seeking reinstatement. The Exchange will not consider a respondent's request for reinstatement if the respondent (i) owes any fines, fees, charges or costs to the Exchange; (ii)

continues to fail to appear at disciplinary proceedings without good cause; or (iii) continues to impede the progress of disciplinary proceedings.

- (f) Within a reasonable period after the filing of a request for reinstatement, the Hearing Panel will conduct a hearing to consider the request. At the hearing for reinstatement, the respondent will present its, his or her case supporting the reinstatement and the Market Regulation Department, acting on behalf of the Chief Regulatory Officer may, in its discretion, present its case opposing or supporting the reinstatement and each may present evidence and facts and call, examine and cross-examine witnesses. At the hearing for reinstatement, the Exchange may require any Participant, Authorized Trader or other Supervised Person to appear as witnesses and produce evidence if the Hearing Panel determines that the evidence is relevant.
- (g) As promptly as reasonably possible after a reinstatement hearing, the Hearing Panel will issue an order reinstating, denying the reinstatement, or placing conditions on the reinstatement of the Trading Privileges and/or ability to otherwise access the Exchange Trading System of the respondent. The order will include a brief summary of the evidence introduced at the reinstatement hearing; and, if applicable, findings of fact and conclusions not contained in the notice of summary action issued pursuant to Rule 715(b) above. The Hearing Panel's order will be the final decision of the Exchange.

RULE 720. Rights and Responsibilities after Suspension or Termination

* * *

- (d) A suspended or terminated Participant or Authorized Trader remains subject to the Exchange Rules and the jurisdiction of the Exchange for acts and omissions prior to the suspension or termination, and must cooperate in any preliminary inquiry, investigation, disciplinary proceeding, summary suspension or other summary action as if the suspended or terminated Participant or Authorized Trader still had Trading Privileges or ability to otherwise access the Exchange Trading System.

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RULE 721. Notice to the Respondent and the Public

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CHAPTER 8: ARBITRATION RULES

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RULE 803. Certain Claims Against the Exchange Involving Trading Systems or Services

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- (d) Award.

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(2) The decision of a majority of the National Futures Association Arbitration Panel shall be final and binding, and there shall be no appeal to the Board, an Exchange committee, or a Disciplinary Panel of the Exchange. A party may move, within three (3) Business Days of the

award, that the award be corrected to remedy any miscalculation or misdescription or where the award is otherwise imperfect in a matter of form not affecting the merits of the award.